

CUSTOMS BULLETIN AND DECISIONS

***Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
Bureau of Customs and Border Protection
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade***

VOL. 37

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This issue contains:

Bureau of Customs and Border Protection

General Notices

U.S. Court of International Trade

Slip Op. 03-58

**DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION**

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the Bureau of Customs and Border Protection, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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Bureau of Customs and Border Protection

General Notices

(T.D. 03-25)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR MAY, 2003

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 03-19 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): May 26, 2003

Australia dollar:

May 06, 2003	\$0.638300
May 07, 2003 .....	.636200
May 08, 2003 .....	.642400
May 09, 2003 .....	.644800
May 10, 2003 .....	.644800
May 11, 2003 .....	.644800
May 12, 2003 .....	.648200
May 13, 2003 .....	.645800
May 14, 2003 .....	.647400
May 15, 2003 .....	.642500
May 16, 2003 .....	.650200
May 17, 2003 .....	.650200
May 18, 2003 .....	.650200
May 19, 2003 .....	.656000
May 20, 2003 .....	.657200
May 21, 2003 .....	.656300
May 22, 2003 .....	.658500
May 23, 2003 .....	.657500
May 24, 2003 .....	.657500
May 25, 2003 .....	.657500
May 26, 2003 .....	.657500
May 27, 2003 .....	.658500
May 28, 2003 .....	.647900
May 29, 2003 .....	.647700

FOREIGN CURRENCIES—Variances from quarterly rates for May 2003
continued):

Australia dollar (continued):

May 30, 2003 .....	.651300
May 31, 2003 .....	.651300

Brazil real:

May 01, 2003	\$0.343348
May 02, 2003 .....	.343643
May 03, 2003 .....	.343643
May 04, 2003 .....	.343643
May 05, 2003 .....	.333890
May 06, 2003 .....	.333556
May 07, 2003 .....	.337268
May 08, 2003 .....	.344234
May 09, 2003 .....	.347464
May 10, 2003 .....	.347464
May 11, 2003 .....	.347464
May 12, 2003 .....	.347826
May 13, 2003 .....	.347222
May 14, 2003 .....	.344828
May 15, 2003 .....	.341763
May 16, 2003 .....	.337496
May 17, 2003 .....	.337496
May 18, 2003 .....	.337496
May 19, 2003 .....	.335289
May 20, 2003 .....	.332226
May 21, 2003 .....	.333056
May 22, 2003 .....	.334448
May 23, 2003 .....	.341647
May 24, 2003 .....	.341647
May 25, 2003 .....	.341647
May 26, 2003 .....	.341647
May 27, 2003 .....	.329598
May 28, 2003 .....	.331126
May 29, 2003 .....	.340948
May 30, 2003 .....	.335683
May 31, 2003 .....	.335683

Canada dollar:

May 08, 2003	\$0.716846
May 09, 2003 .....	.717875
May 10, 2003 .....	.717875
May 11, 2003 .....	.717875
May 12, 2003 .....	.720202
May 13, 2003 .....	.719528
May 14, 2003 .....	.725374
May 15, 2003 .....	.726903
May 16, 2003 .....	.731422
May 17, 2003 .....	.731422
May 18, 2003 .....	.731422
May 19, 2003 .....	.735078
May 20, 2003 .....	.743716
May 21, 2003 .....	.740850

FOREIGN CURRENCIES—Variances from quarterly rates for May 2003
continued):

Canada dollar (continued):

May 22, 2003 .....	.731048
May 23, 2003 .....	.725531
May 24, 2003 .....	.725531
May 25, 2003 .....	.725531
May 26, 2003 .....	.725531
May 27, 2003 .....	.727061
May 28, 2003 .....	.721137
May 29, 2003 .....	.726269
May 30, 2003 .....	.729288
May 31, 2003 .....	.729288

Denmark krone:

May 09, 2003	\$0.154847
May 10, 2003 .....	.154847
May 11, 2003 .....	.154847
May 12, 2003 .....	.155654
May 13, 2003 .....	.154895
May 14, 2003 .....	.154835
May 16, 2003 .....	.155521
May 17, 2003 .....	.155521
May 18, 2003 .....	.155521
May 19, 2003 .....	.157356
May 20, 2003 .....	.157431
May 21, 2003 .....	.157679
May 22, 2003 .....	.157567
May 23, 2003 .....	.158793
May 24, 2003 .....	.158793
May 25, 2003 .....	.158793
May 26, 2003 .....	.158793
May 27, 2003 .....	.159681
May 28, 2003 .....	.158113
May 29, 2003 .....	.159375
May 30, 2003 .....	.158421
May 31, 2003 .....	.158421

Mexico peso:

May 02, 2003	\$0.098087
May 03, 2003 .....	.098087
May 04, 2003 .....	.098087
May 05, 2003 .....	.098087
May 08, 2003 .....	.098241
May 09, 2003 .....	.098883
May 10, 2003 .....	.098883
May 11, 2003 .....	.098883
May 12, 2003 .....	.098155
May 13, 2003098561
May 14, 2003098629

New Zealand dollar:

May 19, 2003	\$0.585500
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FOREIGN CURRENCIES—Variances from quarterly rates for May 2003 (continued):

New Zealand dollar (continued):

May 20, 2003	.586000
May 21, 2003	.583500
May 22, 2003	.582900
May 23, 2003	.582500
May 24, 2003	.582500
May 25, 2003	.582500
May 26, 2003	.582500
May 27, 2003	.583400

Norway krone:

May 12, 2003	\$0.146886
May 15, 2003	.146182
May 16, 2003	.147102
May 17, 2003	.147102
May 18, 2003	.147102
May 19, 2003	.146972
May 20, 2003	.147362
May 21, 2003	.149031
May 22, 2003	.148843
May 23, 2003	.149768
May 24, 2003	.149768
May 25, 2003	.149768
May 26, 2003	.149768
May 27, 2003	.150489
May 28, 2003	.148854
May 29, 2003	.149961
May 30, 2003	.149439
May 31, 2003	.149439

South Africa rand:

May 01, 2003	\$0.137495
May 05, 2003	.137174
May 06, 2003	.137174
May 07, 2003	.136472
May 08, 2003	.138313
May 09, 2003	.137552
May 10, 2003	.137552
May 11, 2003	.137552
May 12, 2003	.136705
May 13, 2003	.136054

Sweden krona:

May 06, 2003	\$0.124914
May 07, 2003	.124611
May 08, 2003	.125549
May 09, 2003	.125439
May 10, 2003	.125439
May 11, 2003	.125439
May 12, 2003	.125881
May 13, 2003	.125298

FOREIGN CURRENCIES—Variances from quarterly rates for May 2003
continued):

Sweden krona (continued):

May 14, 2003 .....	.125282
May 15, 2003 .....	.125066
May 16, 2003 .....	.126183
May 17, 2003 .....	.126183
May 18, 2003 .....	.126183
May 19, 2003 .....	.127275
May 20, 2003 .....	.127146
May 21, 2003 .....	.127779
May 22, 2003 .....	.127738
May 23, 2003 .....	.128337
May 24, 2003 .....	.128337
May 25, 2003 .....	.128337
May 26, 2003 .....	.128337
May 27, 2003 .....	.128982
May 28, 2003 .....	.128436
May 29, 2003 .....	.129067
May 30, 2003 .....	.128776
May 31, 2003 .....	.128776

Switzerland franc:

May 27, 2003 \$0.778150

Dated: June 3, 2003

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(T.D. 03-24)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR MAY, 2003

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): May 26, 2003

European Union euro:

May 01, 2003	\$1.123800
May 02, 2003	1.120000
May 03, 2003	1.120000
May 04, 2003	1.120000
May 05, 2003	1.127100
May 06, 2003	1.135400
May 07, 2003	1.134000
May 08, 2003	1.145300
May 09, 2003	1.149800
May 10, 2003	1.149800
May 11, 2003	1.149800
May 12, 2003	1.155700
May 13, 2003	1.149900
May 14, 2003	1.149800
May 15, 2003	1.145700
May 16, 2003	1.154200
May 17, 2003	1.154200
May 18, 2003	1.154200
May 19, 2003	1.168600
May 20, 2003	1.168500
May 21, 2003	1.170700
May 22, 2003	1.170000
May 23, 2003	1.178600
May 24, 2003	1.178600
May 25, 2003	1.178600
May 26, 2003	1.178600
May 27, 2003	1.185300
May 28, 2003	1.174200
May 29, 2003	1.183500
May 30, 2003	1.176600
May 31, 2003	1.176600

South Korea won:

May 01, 2003	\$0.000824
May 02, 2003	.000824
May 03, 2003	.000824
May 04, 2003	.000824
May 05, 2003	.000822
May 06, 2003	.000833
May 07, 2003	.000834

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list
for February, 2003 (continued):

South Korea won (continued):

May 08, 2003	.000834
May 09, 2003	.000832
May 10, 2003	.000832
May 11, 2003	.000832
May 12, 2003	.000839
May 13, 2003	.000836
May 14, 2003	.000833
May 15, 2003	.000836
May 16, 2003	.000833
May 17, 2003	.000833
May 18, 2003	.000833
May 19, 2003	.000837
May 20, 2003	.000832
May 21, 2003	.000837
May 22, 2003	.000837
May 23, 2003	.000837
May 24, 2003	.000837
May 25, 2003	.000837
May 26, 2003	.000837
May 27, 2003	.000834
May 28, 2003	.000833
May 29, 2003	.000828
May 30, 2003	.000826
May 31, 2003	.000826

Taiwan N.T. dollar:

May 01, 2003	\$0.028694
May 02, 2003	.028736
May 03, 2003	.028736
May 04, 2003	.028736
May 05, 2003	.028736
May 06, 2003	.028818
May 07, 2003	.028818
May 08, 2003	.028860
May 09, 2003	.028860
May 10, 2003	.028860
May 11, 2003	.028860
May 12, 2003	.028860
May 13, 2003	.028818
May 14, 2003	.028818
May 15, 2003	.028860
May 16, 2003	.028860
May 17, 2003	.028860
May 18, 2003	.028860
May 19, 2003	.028902
May 20, 2003	.028902
May 21, 2003	.028852
May 22, 2003	.028827
May 23, 2003	.028818
May 24, 2003	.028818
May 25, 2003	.028818
May 26, 2003	.028818

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list
for February, 2003 (continued):

Taiwan N.T. dollar (continued):

May 27, 2003 .....	.028818
May 28, 2003 .....	.028794
May 29, 2003 .....	.028777
May 30, 2003 .....	.028810
May 31, 2003 .....	.028810

Dated: June 3, 2003

RICHARD B. LAMAN
Chief,
Customs Information Exchange.

Bureau of Customs and Border Protection

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

BONDED WAREHOUSE PROPRIETOR'S SUBMISSION

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Bonded Warehouse Proprietor's Submission. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (68 FR 5697) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing informa-

tion collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1651-0033

Form Number: Form 300

Abstract: CBP Form 300 is prepared by Bonded Warehouse Proprietor's and submitted to CBP annually. The document reflects all bonded merchandise entered, released, and manipulated, and includes beginning and ending inventories.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 1,800

Estimated Time Per Respondent: 24 hours and 18 minutes

Estimated Total Annual Burden Hours: 43,740

Estimated Total Annualized Cost on the Public: \$787,320

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: May 29, 2003

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 4, 2003, (68 FR 33514)]

PROPOSED COLLECTION; COMMENT REQUEST**GENERAL DECLARATION**

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: General Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (68 FR 5701) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: General Declaration (Outward/Inward)

OMB Number: 1651-0002

Form Number: Customs Form 7507

Abstract: Customs Form 7507 allows the agent or pilot to make entry or exit of the aircraft, as required by statute. The form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 500

Estimated Time Per Respondent: 166 minutes

Estimated Total Annual Burden Hours: 83,333

Estimated Total Annualized Cost on the Public: \$1,512,500

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: May 29, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, June 4, 2003, (68 FR 33515)]

PROPOSED COLLECTION; COMMENT REQUEST

LIEN NOTICE

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Lien Notice. This is a proposed exten-

sion of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (68 FR 5700) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before [30 days from the date this notice is published in the Federal Register].

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and

- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Lien Notice

OMB Number: 1651-0012

Form Number: Form 3485

Abstract: The Lien Notice, CBP Form-3485, enable the carriers, cartmen, and similar businesses to notify CBP that a lien exists against an individual/business for non-payment of freight charges, etc., so that the CBP will not permit delivery of the merchandise

from public stores or a bonded warehouse until the lien is satisfied or discharged.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (with change)

Affected Public: Businesses, Institutions

Estimated Number of Respondents: 2,240

Estimated Time Per Respondent: 4 hours

Estimated Total Annual Burden Hours: 9,296

Estimated Total Annualized Cost on the Public: \$104,092,250

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: May 29, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, June 4, 2003, (68 FR 33516)]

PROPOSED COLLECTION; COMMENT REQUEST

IMPORTERS OF MERCHANDISE SUBJECT TO ACTUAL USE PROVISIONS

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Importers of Merchandise Subject to Actual Use Provisions. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extension without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (68 FR 5696-5697) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Importers of Merchandise Subject to Actual Use Provisions
OMB Number: 1651-0032

Form Number: None

Abstract: The Importers of Merchandise Subject to Actual Use Provision is part of the regulation which provides that certain items may be admitted duty-free such as farming implements, seed, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Institutions

Estimated Number of Respondents: 12,000

Estimated Time Per Respondent: 60 minutes

Estimated Total Annual Burden Hours: 13,000

Estimated Total Annualized Cost on the Public: \$380,000

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: May 29, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, June 4, 2003, (68 FR 33516)]

PROPOSED COLLECTION; COMMENT REQUEST

PROOF OF USE FOR DUTY RATES DEPENDENT ON ACTUAL USE

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Proof of Use for Duty Rates Dependent on Actual Use. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extension without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (68 FR 5696-5697) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written

comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Proof of the Use for Rates of Duty Dependent on Actual Use
OMB Number: 1651-0038

Form Number: None

Abstract: The Proof of the Use for Rates of Duty Dependent on Actual Use declaration is needed to ensure Customs control over merchandise which is duty-free. The declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 10,500

Estimated Time Per Respondent: 20 minutes

Estimated Total Annual Burden Hours: 3,500

Estimated Total Annualized Cost on the Public: \$250,000

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: May 29, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, June 4, 2003, (68 FR 33517)]

PROPOSED COLLECTION; COMMENT REQUEST

DECLARATION OF PERSONS WHO PERFORMED REPAIRS OR ALTERATIONS

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Declaration of Persons Who Performed Repairs or Alterations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extension without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (68 FR 5695) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Declaration of Person Who Performed Repairs

OMB Number: 1651-0048

Form Number: None

Abstract: The Declaration of Person Who Performed Repairs is used by Customs to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 20,472

Estimated Time Per Respondent: 30 minutes

Estimated Total Annual Burden Hours: 10,236

Estimated Total Annualized Cost on the Public: \$150,000

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: May 29, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, June 4, 2003, (68 FR 33518)]

PROPOSED COLLECTION; COMMENT REQUEST

COUNTRY OF ORIGIN MARKING REQUIREMENTS FOR CONTAINERS OR HOLDERS

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paper-

work Reduction Act of 1995: Country of Origin Marking Requirement for Containers or Holders. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (68 FR 5699) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated,

- (4) Electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Country of Origin Marking Requirements for Containers or Holders

OMB Number: 1651-0057

Form Number: N/A

Abstract: Containers or Holders imported into the United States

destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of importation into Customs territory.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 250

Estimated Time Per Respondent: 15 seconds

Estimated Total Annual Burden Hours: 41

Estimated Total Annualized Cost on the Public: \$533.00

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: June 3, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, June 4, 2003, (68 FR 33518)]

PROPOSED COLLECTION; COMMENT REQUEST

CUSTOMS MODERNIZATION ACT RECORDKEEPING REQUIREMENTS

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Customs Modernization Recordkeeping Requirements. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (68 FR 5698) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 7, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Customs Modernization Act Recordkeeping Requirements

OMB Number: 1651-0076

Form Number: N/A

Abstract: This information and records keeping requirement is required to allow Customs to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 6,070

Estimated Time Per Respondent: 957 hours

Estimated Total Annual Burden Hours: 5,812,010

Estimated Total Annualized Cost on the Public: \$104,092,250

Dated: May 29, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, June 4, 2003, (68 FR 33519)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, April 21, 2003,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

MICHAEL T. SCHMITZ,
Assistant Commissioner,
Office of Regulations and Rulings

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN SELENIUM COATED GLASS PANELS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the tariff classification of certain selenium coated glass panels under the Harmonized Tariff Schedule of the United States ("HTSUS").

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke one ruling concerning the tariff classification of certain selenium coated glass panels, and to revoke any treatment Customs has previously accorded to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before July 18, 2003.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 572-8776.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke New York Ruling Letter ("NY") H86817, dated January 30, 2002. In NY H86817, merchandise described as an X-ray detector panel was classified under subheading 9030.10.00, HTSUS, which provides for instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations. In reaching this conclusion, we reasoned that "the imported detector array is 14 by 17 inches in size and is the "heart" of the digital detector. This import will lack the electronics of the controller/computer which will be needed to produce images from its electrical output" and, citing Note 2 to Chapter 90, so classified the article. NY H86817 is set forth as "Attachment A" to this document.

Although in this notice Customs is specifically referring to one ruling, NY H86817, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the

merchandise subject to this notice, other than the referenced rulings (see above), should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS or other relevant statutes. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. § 1625(c)(1), Customs intends to revoke NY H86817 as it pertains to the classification of X-ray detector panels, and any other ruling not specifically identified, to reflect the proper classification of the merchandise under subheading 9022.90.60, HTSUS, which provides for other parts and accessories of apparatus based on the use of X-rays, pursuant to the analysis set forth in Proposed HQ 966459 (see "Attachment B" to this document).

Additionally, pursuant to 19 U.S.C. § 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 29, 2003

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, January 30, 2002.
CLA-2-90:RR:NC:N1:105 H86817
Category: Classification
Tariff No.: 9030.10.0000

MR. JONATHAN BECK
TOWER GROUP INTERNATIONAL
810 Cromwell Park Drive, Suite E
Glen Burnie, MD 21061-2562

Re: The tariff classification of an X-ray detector panel from Canada

DEAR MR. BECK:

In your letter dated November 5, 2001, received here December 31, 2001, for Direct Radiography, you requested a tariff classification ruling.

In its imported state, no sample provided, "the panel would consist of TFT (Thin Film Transistor) panels laminated to a sheet of glass for added strength. These panels would have amorphous selenium coated onto the panel."

From the information provided, the imported detector array is 14 by 17 inches in size and is the "heart" of the digital detector. This import will lack the electronics of the controller/computer which will be needed to produce images from its electrical output. The final images will be similar to, but more precise than, the images produced on a traditional, direct view, X-ray screen. The imported array will produce electricity proportional to the intensity of X-rays striking each small area of the device.

You propose classification in HTS 9022.90.60. However, in accordance with Note 2-a to HTS Chapter 90, the fact that the import in itself, not just as a part of a larger system, is covered by a heading of Chapter 90 controls its classification.

The applicable subheading for the X-ray detector array will be 9030.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations. The general rate of duty will be 1.6 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist J. Sheridan at 646-733-3012.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
CLA-2 RR:CR-GC 966459 AML
CATEGORY: Classification
TARIFF NO.: 9022.90.60

MR. JONATHAN BECK
TOWER GROUP INTERNATIONAL
810 Cromwell Park Drive, Suite E
Glen Burnie, MD 21061-2562

Re: NY H86817 revoked; Binding ruling concerning selenium coated panels for Thin Film Transistor ("TFT") instruments

DEAR MR. BECK:

This is in reference to New York Ruling Letter ("NY") H86817, dated January 30, 2002, issued to you on behalf of Direct Radiography Corporation, concerning classification of certain selenium coated, X-ray detector arrays or panels for Thin Film Transistor ("TFT") instruments, under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have reconsidered the classification made in NY H86817 and determined that it is incorrect. This ruling sets forth the correct classification.

Facts:

We described the articles in NY H86817 as follows:

In its imported state, no sample provided, "the panel would consist of TFT (Thin Film Transistor) panels laminated to a sheet of glass for added strength. These panels would have amorphous selenium coated onto the panel."

From the information provided, the imported detector array is 14 by 17 inches in size and is the "heart" of the digital detector. This import will lack the electronics of the controller/computer which will be needed to produce images from its electrical output. The final images will be similar to, but more precise than, the images produced on a traditional, direct view, X-ray screen. The imported array will produce electricity proportional to the intensity of X-rays striking each small area of the device.

In NY H86817, we classified the TFT panels under subheading 9030.10.00, HTSUS, which provides for instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations.

Issue:

What is the essential character and classification of the coated, laminated TFT panels under the HTSUS?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

7007	Safety glass, consisting of toughened (tempered) or laminated glass:
	Laminated safety glass:
7007.29.00	Other.

- 9022 Apparatus based on the use of X-rays or of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examination or treatment tables, chairs and the like; parts and accessories thereof: Apparatus based on the use of X-rays, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus:
- 9022.90 Other, including parts and accessories:
- Other:
- 9022.90.60 Of apparatus based on the use of X-rays.
- ***
- 9030 Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof:
- 9030.90 Parts and accessories:
- Other:
- 9030.90.88 Other.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In classifying the articles, Note 1 to Chapter 90 provides, in pertinent part, that:

1. This chapter does not cover:

(e) Goods of heading 7007, 7008, 7011, 7014, 7015 or 7017[.]

Similarly, Chapter Note 1(d) to Chapter 70, HTSUS, states that that chapter does not cover " *** optically worked optical elements *** of [C]hapter 90[.]"

Heading 7007, HTSUS, provides, in pertinent part, for safety glass consisting of laminated glass.

EN 70.07, provides, in pertinent part, that:

The term "safety glass" covers only the types of glass described below and does not refer to protective glass such as ordinary wired glass and selective absorption glasses (e.g., anti-glare glass, X-ray protective glass).

Safety glass *incorporated in other articles and thus in the form of parts of machines, appliances or vehicles* is classified with those machines, appliances or vehicles (emphasis added).

We find that the laminated panels of glass, in and of themselves, would not be referred to commercially as "safety glass." The unrefuted evidence is that the Korean TFT panels are laminated with a glass backing only to provide stability in transit; there is no indication that the lamination enhances in any manner the function of the TFTs when they are complete.

Once the panels are coated with selenium in Canada, they have been further worked, and, for tariff purposes, can no longer be considered mere panels of laminated glass. However, as imported, they are incomplete or unfinished articles which must be further processed into detector modules which are X-ray receptor devices whose function is to detect radiations, convert them to light then to electrical signals. A CT scanner then processes these signals to create images that are displayed on a monitor. Information available to us with respect to substantially similar glass panels indicates that the further processing whereby the selenium coated glass panels are completed into X-ray receptor devices or digital detectors includes the depositing of additional, unspecified proprietary coatings on top of the selenium, attachment of various elec-

tronic components around the periphery of the glass panels, followed by mounting each assembled panel into a mechanical frame along with printed circuit assemblies and other electronic assemblies and cables.

GRI 2(a) provides, in pertinent part that "any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article." The evidence presented indicates that it is the selenium coating that renders the TFT panels capable of performing their intended function of capturing X-ray radiations in the form of an electrical charge. Without this coating the panels are incapable of being used as digital detectors. From this, we conclude that the selenium coating imparts the essential character to the TFT panels, such that, for tariff purposes, they are to be classified as complete or finished digital detectors or X-ray receptor devices.

In Protest Review Decision 965641, dated September 30, 2002, we classified, among other things, component articles involved in the detection of x-rays under heading 9022, HTSUS. In so doing we stated:

In this case, it is our opinion that the detector module, which is a basic element in the receptor assembly in the gantry, is not an "apparatus" within the meaning of heading 9022. It is not like the other named components, such as an X-ray tube, generator, control panel or screen, which function as distinct components of the apparatus of heading 9022. In HQ 952358 (October 13, 1992) we classified an X-ray image intensifier tube as an apparatus of heading (sic) 9022.90.20, HTSUS (1992). The image intensifier tube consisted of a tube, high-tension generator and test plate enclosed in a housing. The intensifier tube was used with an optical device (attached to the tube) in order to display the image that was generated by the intensifier tube from radiation from an X-ray machine. As such, the image intensifier was held to be classifiable as an apparatus, arguably in the same manner as a high-tension generator.

The detector module is an X-ray receptor device that detects individual radiations (scintillations) and converts them to light that is then converted to electrical signals which provide data as to the brightness and location of the scintillations. These signals are then used and processed, in this case, by a CT scanner to create an image. The detector module is that part of the receptor system in a CT scanner that merely detects and converts the degree of radiation that has passed through an object. It is not a separate apparatus of heading 9022. We note that the EN 9022(III), (A) through (F) on pages 1819 to 1820 of the Explanatory Notes to the Harmonized Commodity Description and Coding System (HS), Third Edition (2002), describes various "apparatus" that are classifiable as apparatus in heading 9022. Items (A) through (F) describe devices which either generate an X-ray beam or other radiation, or which function as a display, control system or furniture specialized for X-ray work. A detector module is not like these apparatus. It is, however, a necessary and essential component of a CT scanner and, therefore, satisfies the basic test for a "part" of a good.

Note 2 to Chapter 90 directs classification of parts of apparatus of heading 9022 to that heading if they are solely or principally used with such apparatus, provided that the parts are not goods of another heading of chapter 84, 85, 90 or 91. Heading 9030 in Chapter 90 provides, in pertinent part, "for instruments and *apparatus for measuring or detecting* alpha, beta, gamma, X-ray, cosmic or other ionizing radiations" (underscoring added for emphasis). Whereas the detector module appears to satisfy the terms of this heading, we again point out that the detector modules are not complete measuring or detecting devices in and of themselves. They function to receive and convert radiation into electrical signals and are designed to be incorporated into a device. EN 9030 (A), pages 1846 to 1847 of the HS Explanatory Notes, describes devices which receive, record and provide information as to what has been measured or detected. By itself, a detector module is incomplete as a measuring or detecting apparatus. As indicated previously, it constitutes an essential part of a device that measures and detects radiations, e.g., a CT scanner. Based on the information provided by the protestant, these are

solely or principally used in apparatus of heading 9022. They are not used in devices of the type described in heading 9030.

Therefore, we conclude that the detector modules are not apparatus of heading 9030, that they are parts of apparatus of heading 9022, and, therefore, pursuant to Note 2(b) to Chapter 90, the detector modules are classifiable as parts of apparatus based on the use of X-rays in heading 9022, and specifically in subheading 9022.90.60, HTSUS. HQ 965641 at pp. 5-6.

As indicated in HQ 965641, Note 2 to Chapter 90, HTSUS, provides, in pertinent part, as follows:

Subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8485, 8548 or 9033) are in all cases to be classified in their respective headings;

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013, or 9031) are to be classified with the machines, instruments or apparatus of that kind;

(c) All other parts and accessories are to be classified in heading 9033.

In compliance with Note 2 to Chapter 90 and the language of heading 9022, HTSUS, and because the evidence presented establishes that the subject panels are suitable for use solely or principally with goods of heading 9022, HTSUS, they are classified in heading 9022, HTSUS.

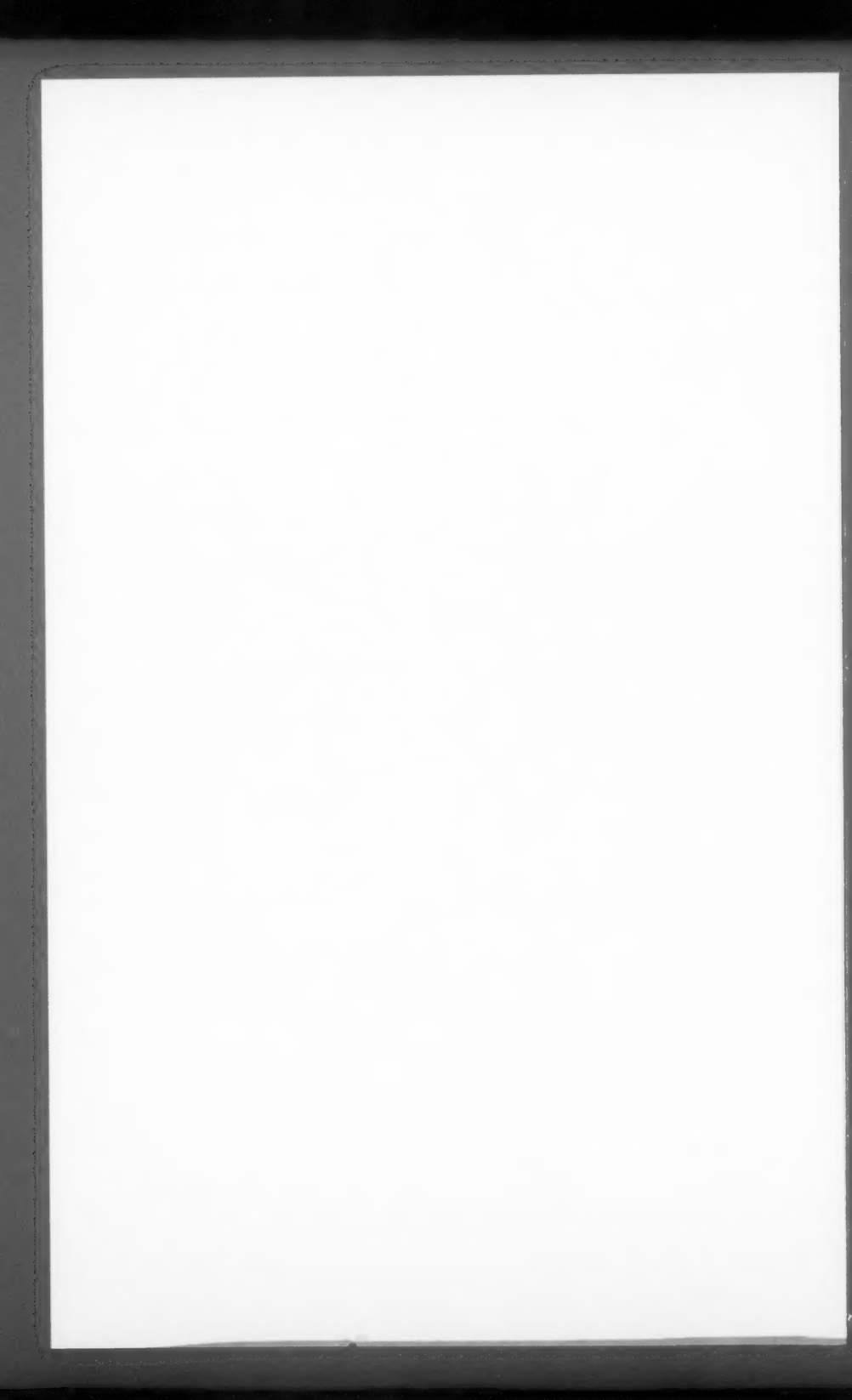
Holding:

The subject selenium coated TFT glass panels are classified under subheading 9022.90.60, HTSUS, which provides for other parts and accessories of apparatus based on the use of X-rays.

Effect on Other Rulings:

NY H86817 is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.



United States Court of International Trade

One Federal Plaza
New York, NY 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach

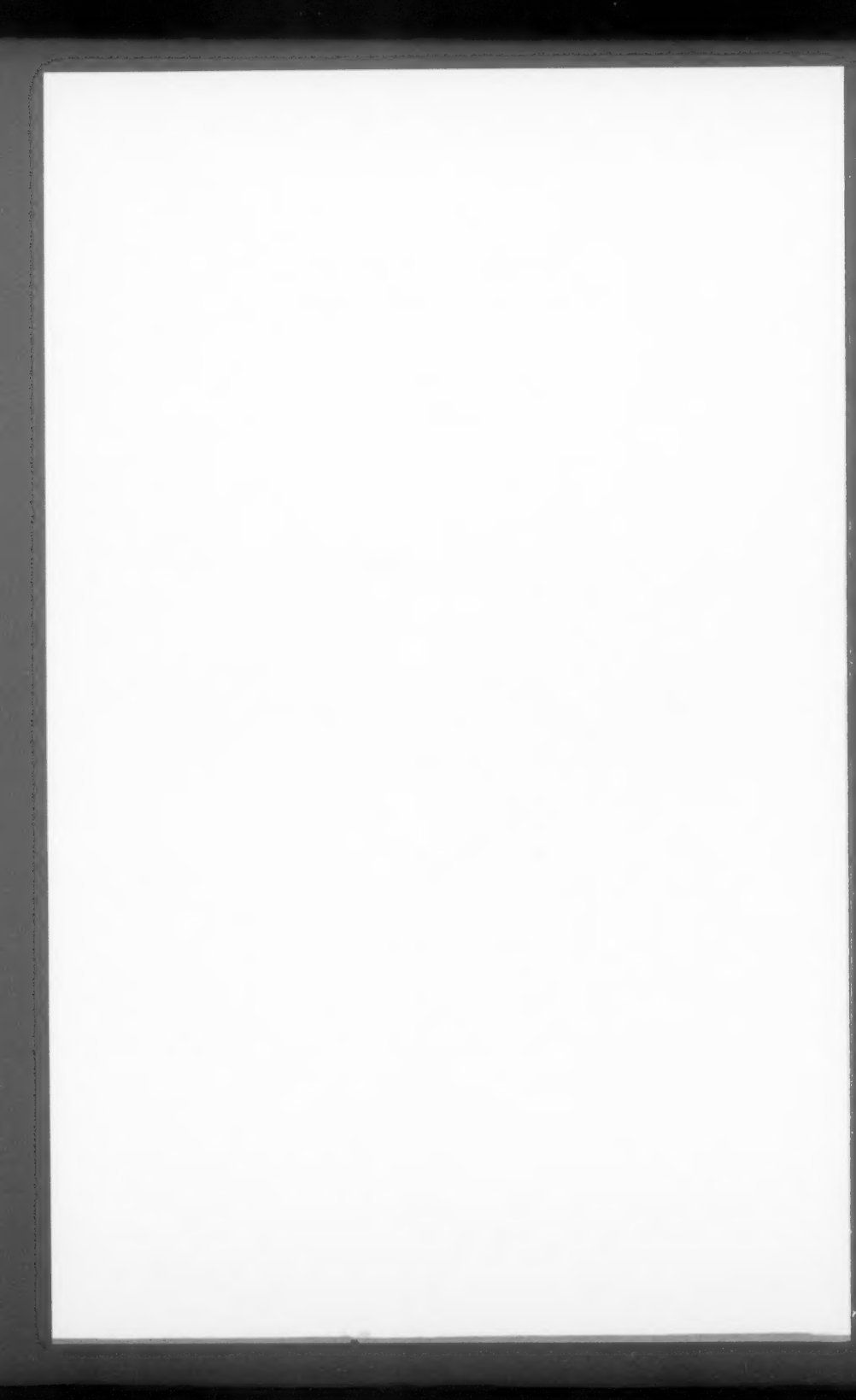
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon



Decisions of the United States Court of International Trade

(Slip Op. 03-58)

C.J. TOWER, INC., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 92-01-00035

[Upon cross-motions as to classification of machinery used in processing paper pulp, summary judgment for the defendant.]

(Decided May 30, 2003)

Barnes, Richardson & Colburn (Sandra Liss Friedman) for the plaintiff.

Robert D. McCallum, Jr., Assistant Attorney General, *John J. Mahon*, Acting Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Bruce N. Stratvert*); and Office of Assistant Chief Counsel, International Trade Litigation, U.S. Bureau of Customs and Border Protection (*Edward N. Maurer*), of counsel, for the defendant.

OPINION AND ORDER

AQUILINO, Judge: The parties to this action have managed to reduce its essence to but a few words selected from the Harmonized Tariff Schedule of the United States (HTSUS) (1989), notwithstanding the impressive size and complexity of the underlying machinery imported from Canada to advance the processing of pulp into the kind of material upon which those words have been written.

Duties of 3.1 percent ad valorem were assessed on the seven entries of that equipment by the U.S. Customs Service per HTSUS subheading 8421.21 ("Filtering or purifying machinery and apparatus for liquids: For filtering or purifying water"). The importer of record of the merchandise lodged a protest of that classification which was denied by Customs, whereupon the plaintiff presses its prayer herein for duty-free entry under HTSUS subheading 8439.10 ("Machinery for making pulp of fibrous cellulosic material").

Each side is of the view that it is entitled to judgment as a matter of law. That is, each takes the position that there is no genuine issue as to any material fact within the meaning of USCIT Rule 56(c) and

has therefore moved for summary judgment pursuant that rule.

I

Rule 56(h) provides that, upon any motion for summary judgment, there shall be annexed a statement of the material facts as to which the moving party contends there is no genuine issue to be tried and also that the

papers opposing a motion for summary judgment shall include a separate * * * statement of the material facts as to which it is contended that there exists a genuine issue to be tried. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

Appended to plaintiff's motion is its required affirmative statement, along with a supporting affidavit by the manager of the successor to the corporate manufacturer of the equipment at bar. Among other things, that statement avers:

4. The imported merchandise consists of machines known as disc filters * * * and drum filters * * * which are specially designed for use solely in the pulp making process.

5. As imported, the disc filters are used in the thermo-mechanical pulp making process to reduce a pulp slurry consisting of approximately one percent wood chip fiber and 99 percent water to approximately ten percent fiber and 90 percent water, a process known as "deckering" or "thickening". This is done to facilitate high density storage of the pulp during the pulp making process.

6. The imported disc filters consist of a central collector containing up to thirty parallel filters in disc shape, each filter consisting of up to twelve individual sectors. Each sector is made up of a stainless steel frame with a membrane or filter cloth composed of polypropylene stretched over its face.

7. In addition, the other main components of the disc filters are the vat, which is the bottom portion * * * through which the slurry passes during the thickening process; the feedbox, through which the rate and density of the slurry entering the machine is controlled and which is welded to the vat; the bronze worm gear and bearings used to drive the machine; the dectagonal center shaft connected to the valve, through which the filtrate (water and some pulp fibers) is extracted; the valve controlling the vacuum, which connects the barometric leg with the center shaft; the stainless steel hood that serves as a cover for the machine; oscillating showers for cleaning the cover; the discharge nozzles for removal of thickened pulp from the sectors; the crenelation chutes that assist in discharging the thickened pulp; and, a repulper conveyor that

blends and channels the thickened pulp out of the machine toward the storage area.

8. Each disc is up to 15 feet in diameter, and can provide an approximate filtration area of 310 square feet.

9. The discs and center shaft are rotated at approximately 1 RPM.

10. As the discs rotate, the lower portion of each sector passes through the one percent slurry contained in the vat.

11. As the vacuum is applied to each disc, the pulp adheres to the filter cloth on the sectors. Some of the filtrate from the one percent slurry passes through the filter cloth into the center shaft and out of the machine, down a twenty-five foot barometric leg, leaving fibers adhering to the outside of the filter cloth.

12. The discharge nozzles apply a water spray, consisting of water previously removed during the process, to free the remaining pulp slurry from each sector.

13. The discharged pulp fiber is removed from the machine through the crenelation chutes, chutes into the repulper conveyor, which then transfers the thickened pulp fiber to storage tanks, one percent consistency to approximately a ten percent consistency.

14. The pulp fiber drops through the crenelation

15. The pulp fiber has now been concentrated from a

16. When the pulp fiber is to be transferred to the next stage in the pulpmaking process, it is rediluted with the filtrate previously removed during the prestorage concentration, or with water taken from the pulpmill. At this time, the slurry is rediluted to yield approximately the same one percent wood chip pulp/99 percent water consistency that it had prior to deckering. This allows the pulp slurry again to flow freely.

17. The disc filters are also used in "saveall" applications, a process designed to remove additional fibers and chemicals from "white water." White water refers to the liquid component of the pulp slurry after it was separated from the wood fibers during dewatering, which occurs after the slurry passes through the forming wire of the paper making machine.

18. After the saveall application, the white water is either returned to the pulpmill and used as dilution or shower water, or is sent to an effluent unit for filtering and purifying prior to disposal as waste. The recovered fibers are returned to the feed stock.

19. As imported, the drum filters are used in pulp mills as deckers for thickening the pulp slurry to facilitate its storage during the paper making process.

20. The drum filter is approximately twelve feet wide in diameter, and is covered with a polypropylene filter cloth that acts as a membrane through which water passes.

21. In addition, the other main components of drum filters are the vat, which is the bottom portion *** through which the slurry

passes during the thickening process; feedbox, through which the rate and density of the slurry entering the machine is controlled; cylinder head drive unit, which is used to drive the drum; center shaft connected to the valve, through which the filtrate is extracted; the valve controlling the vacuum, which connects the barometric leg with the center shaft; doctor blade used to lift the pulp sheet off the membrane; and, repulper conveyor that channels the thickened pulp out of the machine toward the storage area.

22. The drum filter is rotated through the vat containing the one percent pulp slurry. A vacuum created through the action of the barometric leg and the valve is applied to the drum, which causes a sheet to build up on the drum's outer surface. through the cylinder into the center shaft, which removes the water from the drum via the valve and the barometric leg. off the drum's filter cloth, where it is then removed by the repulper conveyor and thereafter transferred to storage.

23. The vacuum also draws some of the filtrate

24. A doctor blade is used to lift the pulp sheet

25. At this point, the pulp slurry has been concentrated to approximately a ten percent consistency.

26. Drum filters are built to customer specifications and their dimensions depend on plant production, physical size and fiber characteristics.

27. As imported, the drum filters may also be used in saveall applications to recover fibers and chemicals from the white water after the slurry has been dewatered.

28. As in the case with disc filters when used in saveall applications, after using a drum filter in a saveall application, the white water is either returned to the pulp mill and used as dilution or shower water, or is sent to an effluent unit for filtering and purifying prior to disposal as waste.

29. As imported, the drum filters can only be used as deckers or in saveall applications. While drum filters may be designed for use in washing or deinking operations, th[ose] at issue are not designed for such use, nor can they be used in [such] applications because they lack shower pipe assemblies, necessary components for washing.

30. The imported merchandise is not used to completely remove the water component from the pulp component in the paper slurry.

31. The imported merchandise is not used to separate water containing chemicals from the pulp slurry.

32. The filtrate removed from the pulp slurry during the deckering process is returned to the pulp slurry once the slurry is ready to be moved to the next step in the pulpmaking process. replaced with clear water. final dewatering stage of the paper making process. in the final dewatering stage of the papermaking pro-

cess. process for making pulp of fibrous cellulosic materials.

33. The filtrate removed from the pulp slurry is not

34. The imported merchandise is not used in the

35. The imported merchandise is not suitable for use

36. The imported devices are machinery used in the

37. Thickening or deckering is a necessary step in making pulp of fibrous cellulosic materials.

Defendant's formal response to this statement admits foregoing paragraphs 6, 8, 9, 11, 20, 22, 23, 26 and 30. It admits in part paragraphs 4, 5, 7, 10, 12-19, 21, 24, 25, 28, 29, 34-37. Paragraphs 27 and 33 are denied "for lack of information". Defendant's denials of paragraphs 31 and 32 state:

31. * * * [T]he Government believes the statement turns on the meaning of "separate." Based on plaintiff's brief, it appears plaintiff interprets "separate" as requiring a complete separation. If that definition of "separate" applies, then it is true the imported merchandise does not remove 100% of the water in the pulp stock.

32. * * * While we agree that a liquid may be added to the 10% pulp slurry during later operations, we do not believe that the liquid is water with the same characteristics as the filtrate that is removed by the deckering process. We believe the water which is used to rehydrate the slurry is a cleaner water, with fewer of the contaminants that are removed in the deckering process, such as dirt, bark, undigested wood chips, and dissolved chemicals.

The defendant avers that these two denials, as well as that of paragraph 33, "may create a material issue of fact". It suggests the same with regard to certain, partial denials of paragraphs 5, 12 and 16. To the extent it has denied any part of the paragraphs not admitted on their face, the defendant does not consider that those responses engender any material issue of fact requiring trial.

Indeed, the defendant itself has cross-moved for summary judgment. Its Statement of Additional Material Facts as to Which There is No Genuine Issue to be Tried, which is accompanied by declarations from two Customs National Import Specialists, is as follows:

1. Disc and drum filters are used in a wide variety of industries and processes, including the treatment of metallurgical slurries, food processing, sewage treatment, petroleum and chemical processing, as well as in pulp processing. * * *

2. In all these operations, the disc and drum filters operate on the same guiding principle and employ * * * much of the same technology. Specifically, a feedstock contains two or more different materials (a liquid and a solid); the feedstock passes over a selective barrier; a portion of the liquid (and some solid particles small enough to pass through the barrier) passes through the barrier, while the rest of the materials do not pass through, and instead

adhere to the surface of the selective barrier. The adhering material is then removed from the machine, and thus, the feedstock is physically separated into two materials with their own compositions; one is richer in one of the feedstock materials, and the other is poorer. * * *

3. The disc and drum filters are commonly referred to in reference books and in the industries that use them as filtering machines. * * *

4. The water that is added back to the thickened pulp has a lower concentration of particulate matter and/or dissolved chemicals than the water which is the filtrate from the thickener. After the "water" has been added back, the pulp has been beneficiated because the concentration of impurities in the water—particulate matter and dissolved chemicals—has been significantly reduced by the process. * * *

5. Water is added back after one or more intermediate steps, which are "high consistency" operations. * * *

The plaintiff has not filed any response to this statement, whereupon the defendant has interposed a motion to deem its contents admitted. Plaintiff's reply to this motion is that,

because Defendant's Material Fact Statement does not contain material facts as defined in *Anderson [v. Liberty Lobby, Inc.]*, 477 U.S. 242, 248 (1986)], they are not deemed admitted pursuant to CIT Rule 56(h), *supra*].

As indicated hereinafter, the court concurs, and defendant's motion for admission is hereby denied.

As for plaintiff's own statement, quoted above, its proponent has interposed a motion to strike defendant's response thereto as not in conformity with Rule 56(h), *supra*, and thus to deem that statement admitted in its entirety thereunder. Plaintiff's point is well-taken, as nowhere therein does the defendant "contend[]" that there exists a genuine issue to be tried." Indeed, to repeat, both sides are of the view that this action does not require a trial.¹

Upon review of all of the papers presented by them, and as discussed hereinafter, the court concludes that this action is susceptible to summary judgment. Jurisdiction is pursuant to 28 U.S.C. § 1581(a).

II

Defendant's classification (8421.21) and plaintiff's proposed alternative classification (8439.10) are found within 1989 HTSUS chapter 84 of its section XVI, which encompasses machinery and mechanical

¹ See, e.g., Plaintiff's Motion for Summary Judgment, first page; Defendant's Opposition to Plaintiff's Motion to Strike its Response to Plaintiff's Statement of Facts Not in Dispute, p. 1.

appliances, etc. Headnote 2 to that chapter states that, subject to the operation of note 3 to section XVI,

machine or appliance which answers to a description in one or more of the headings 8401 to 8424 and at the same time to a description in one or more of the headings 8425 to 8480 is to be classified under the appropriate heading of the former group and not the latter.

The referenced note 3 states:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

A

As oft opined by the Court of Appeals for the Federal Circuit, e.g., *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356-57 (Fed.Cir. 2001), the meaning of a tariff term, a matter of statutory construction, is a question of law, citing *Bausch & Lomb, Inc. v. United States*, 148 F.3d 1363, 1366 (Fed.Cir. 1998). When, as in this action, that term is not defined in either the HTSUS or its legislative history, its "correct meaning is its common meaning." *Mita Copystar America v. United States*, 21 F.3d 1079, 1082 (Fed.Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod America Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain that common meaning, a court "may consult dictionaries, scientific authorities, and other reliable information sources"¹ and "lexicographic and other materials." *Id.*

(1)

The crux of the instant controversy, according to the plaintiff in its motion, is that the imported merchandise is not a filter for purposes of HTSUS subheading 8421.21²; "[d]ictionary and scientific lexicons *** specifically acknowledge that the imported devices are not filters." Plaintiff's Memorandum of Law, p. 8. The defendant disagrees.

(a)

² *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 69 CCPA 128, 133, 673 F.2d 1268, 1271 (1982).

³ The plaintiff argues that the imported machines "do not filter or purify, and are primarily used to thicken pulp on a temporary basis by removing some of the water component from the stock." Plaintiff's Memorandum of Law in Opposition to Defendant's Cross-Motion for Summary Judgment, p. 5.

To refer first to such sources is to learn that the McGraw-Hill Dictionary of Scientific and Technical Terms, p. 799 (6th ed. 2003), for example, defines filter as a "porous article or material for separating suspended particulate matter from liquids by passing the liquid through the pores in the filter and sieving out the solids". Webster's Third New International Dictionary, p. 850 (1993), defines the term as "a porous article or mass (as of cloth, paper, or sand) that serves as a medium for separating from a liquid or gas passed through it matter held in suspension or dissolved impurities or coloring matter". Volume 7 of the McGraw-Hill Encyclopedia of Science and Technology (9th ed. 2002), describes the process of filtration at page 119 in the following manner:

The separation of solid particles from a fluidsolids suspension of which they are a part by passage of most of the fluid through a septum or membrane that retains most of the solids on or within itself. The septum is called a filter medium, and the equipment assembly that holds the medium and provides space for the accumulated solids is called a filter. The fluid may be a gas or a liquid. The solid particles may be coarse or very fine, and their concentration in the suspension may be extremely low (a few parts per million) or quite high (>50%).

The object of filtration may be to purify the fluid by clarification or to recover clean, fluid-free particles, or both. In most filtrations the solids-fluid separation is not perfect. In general, the closer the approach to perfection, the more costly the filtration; thus the operator of the process cannot justify a more thorough separation than is required.

* * * * *

Liquid filters are of two major classes, cake filters and clarifying filters. The former are so called because they separate slurries carrying relatively large amounts of solids. They build up on the filter medium as a visible, removable cake which normally is discharged "dry" (that is, as a moist mass), frequently after being washed in the filter. It is on the surface of this cake that filtration takes place after the first layer is formed on the medium. * * *

A similar definition of filtration is found in 1 Van Nostrand's Scientific Encyclopedia, pp. 1146-48 (7th ed. 1989), to wit:

A very common requirement of several industries, such as chemical and biologicals manufacturing, food processing, ore processing, and water and waste treatment, is the separation of solids that are suspended in liquids. Filtration is a principal means for effecting such separation. * * * In filtration, the suspension containing the solids is caused to pass through a porous medium. Numerous filtering media are used, including paper, cloth, and wire

cloth. Filtration may be conducted under positive pressure or vacuum.

* * * * *

Rotary Drum Filters. This design is probably the most versatile and widely used continuous filter in the process industries. The rotary drum filter makes it possible to concentrate slurry solids to dry (moist) cakes, to wash solubles from such cakes when needed, and to produce a clarified effluent. * * *

A horizontal drum is partially submerged in a vat that contains the slurry to be filtered. A vacuum is applied through a central valve on the drum shaft to individual compartments or sections that provide support and drainage for the filter medium. The filter cake is formed while the sections were immersed. When the sections emerge (because of continuous rotation of the drum), additional dewatering takes place as air passes through the cake, thus displacing a significant portion of the mother liquor. Before final dewatering, wash water may be applied to remove any remaining soluble solids. Discharge of the dewatered cake is effected by cutting off the vacuum and applying a reverse air blow. As the cake separates from the filter cloth, a scrapper blade deflects it whereupon it is dropped to a conveyor or discharge trough below. * * *

(b)

The plaintiff does not present definitions of filter and filtration that differ materially from the foregoing. Rather, it emphasizes the limited separation of water⁴ from the slurry by its machines and the fact that even that partial dewatering is only temporary, with water returned to the pulp during subsequent processing. In support of its thesis that that thickening or "deckering" does not amount to filtration, the plaintiff refers the court to *Noss Company v. United States*, 7 CIT 111, 588 F.Supp. 1408 (1984), *aff'd*, 753 F.2d 1052 (Fed.Cir. 1985), and *A.N. Deringer v. United States*, 10 CIT 798, 656 F.Supp. 670 (1986), *aff'd*, 832 F.2d 592 (Fed.Cir. 1987), both of which cases have been affirmatively relied upon in *Arthur L. Franklin v. United States*, 289 F.3d 753, 758-59 (Fed.Cir. 2002). At issue in *Noss* was the classification under the Tariff Schedules of the United States ("TSUS") then in effect of a centrifugal cleaner known as a Radiclone, which was used for treating pulp in the papermaking process. The evidence in that action, as in this one, showed importation of the merchandise for use in that process. Upon final analysis, however, the court in *Noss* could not overlook the TSUS headnote of the kind quoted hereinabove, which afforded precedence to the government's classification (albeit proposed for the first time at trial) over the specific TSUS item favored by the plaintiff but subordinate in the governing tariff schedule. See 7 CIT at 117, 588 F.Supp. at 1413. That is, the court concluded that the Radiclone satisfied TSUS item

661.95 ("Centrifuges; filtering and purifying machinery and apparatus * * * for liquids or gases") by finding it to be within a general class of machinery "that have the effect of removing impurities from liquids or gases by various processes."⁴ "This sort of equipment is often referred to as 'liquid-solid separators[]'. * * *" *Id.*

The court in *A.N. Deringer, supra*, found the primary purpose of the subject merchandise was to filter and purify raw maple sap by filtering excess water away from it. The "process described is filtering or purifying whether the permeate (excess water) or the concentrate (dewatered sap) is the ultimate product desired." 10 CIT at 800, 656 F.Supp. at 672. Moreover, that ultimate product was obtained by applying heat to cause additional water to evaporate therefrom. See 10 CIT at 799, 656 F.Supp. at 671.

In short, plaintiff's quantum thesis of filtration is neither supported by the case law nor by the definitions referred to above. Indeed, as quoted from the McGraw-Hill Encyclopedia of Science and Technology, "the closer the approach to perfection, the more costly the filtration; thus the operator of the process cannot justify a more thorough separation than is required."

III

In conclusion, there is no question, and the court so finds, that plaintiff's machinery is for making pulp of fibrous cellulosic material within the meaning of HTSUS subheading 8439.10, but the court also concludes that that merchandise falls within the ambit of subheading 8421.21 ("Filtering * * * machinery and apparatus for liquids: For filtering * * * water") and that head-note 2 to HTSUS chapter 84 of its section XVI, *supra*, therefore counsels classification under that lower-numbered subheading. Cf. *A.N. Deringer v. United States*, 10 CIT 798, 801, 656 F.Supp. 670, 672 (1986), *aff'd*, 832 F.2d 592 (Fed.Cir. 1987). In fact, plaintiff's most articulate papers⁶ in support of its motion for summary judgment, nonetheless, name the goods at issue throughout as "filters". This being what they in essence are, that motion for relief from the duties imposed must be denied, and defendant's cross-motion for summary judgment will therefore be granted. So ordered.

Decided: New York, New York
May 30, 2003

⁵ 7 CIT at 116, 588 F.Supp. at 1413. The court apparently accepted the parties' agreement that the *Radicle* "does not 'filter' since that process involves the passage of the impure material over a porous surface", *id.*, but it determined to disregard TSUS item 661.95's conjoiner of "filtering" with "purifying", finding that that "apparatus * * * rid liquids or gases of impurities." 7 CIT at 116, 588 F.Supp. at 1412.

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